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EXAMINER
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ART UNIT	PAPER NUMBER
2191	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/807,623	GALLOWAY ET AL.
Office Action Summary	Examiner	Art Unit	
	Phillip H. Nguyen	2191	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>25 February 2008</u>.

2a) ☒ This action is **FINAL**.   2b)☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-23 and 47-64* is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-23 and 47-64* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some * c)☐ None of:

       1. ☐ Certified copies of the priority documents have been received.

       2. ☐ Certified copies of the priority documents have been received in Application No. _____.

       3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the amendment filed 2/25/2008.

2.   The petition is granted.

3.   Per applicant's request, claims 1-23 have been amended; claims 24-46 have

been canceled; claims 47-64 are newly added; claims 1-23 and 47-64 remain pending

and have been considered below.

Response to Amendment

4.   In view of the amendment, prior objections to form 1449 and the abstract are

hereby withdrawn.

5.   In view of the amendment, prior rejection to claims 24-46 under 35 USC 101 is

hereby withdrawn.

Response to Arguments

6.   Applicant's arguments filed 2/25/2008 have been fully considered but they are

not deemed persuasive.

       Applicants assert on pages 23-24 regarding the independent claims that

Strothmann fails to teach *selecting at least one assessment type from three assessment*

types for estimating cost and/or time requirements for migrating an application from one

platform to another, where each of the three assessment types delineates a degree of

accuracy for the cost and/or time estimated for migrating the application from one

platform to another, with a first assessment type being greater in accuracy than a

second assessment type and with the second assessment type being greater in

accuracy than a third assessment type.

Examiner respectfully disagrees with the allegation as argued. Strothmann

teaches in TABLES A-P showing different types of assessment, where each of these

assessment types delineates a degree of accuracy for the cost and/or time estimated

for migrating application from one platform to another. For example, **TABLE C** shows

the training costs per year and application. The first year can be the first assessment

type delineates the degree of accuracy for the cost and/or time estimated for migrating

application from one platform to another. *The training costs for the initial generic units*

will generally be higher than training costs for later units. In other words, the first

assessment type is being greater in accuracy than the second assessment type and the

second assessment type is being greater in accuracy than the third assessment type

and so forth (see at least col. 5:1-25).

Examiner is entitled to give claim limitations their broadest reasonable

interpretation in light of the specification. See MPEP 2111 [R-1] Interpretation of

Claims-Broadest Reasonable Interpretation. During patent examination, the pending

claims must be given their broadest reasonable interpretation consistent with the

specification.

Applicant always has the opportunity to amend the claims during the prosecution

and broadest interpretation by the examiner reduce the possibility that the claims, once

issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,

550-51 (CCPA 1969).

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8.   Claim 1-23 and 47-64 are rejected under 35 U.S.C. 102(b) as being anticipated

by Strothmann (United States Patent No.: 5,745,880).

As per claims 1 and 47:

Strothmann discloses:

-   receiving identifications of one or more migration tasks for migrating said

    computer-based application from said source platform to said target platform

    (see at least col. 2:44-45 "**move or migrating**");

-   receiving at least one assessment type selected for estimating a coast for

    migrating said computer-based application from said source platform to said

    target platform, wherein said at least one assessment type received comprises at

least one of: a first assessment type, a second assessment type and a third assessment type, and wherein said first assessment type delineates a degree of accuracy for estimating said cost that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said cost that is greater than said third assessment type (see at least **TABLE C – "The training costs for the initial generic units will generally be higher than training costs for later units."** In other words, the first assessment type is being greater in accuracy than the second assessment type and the second assessment type is being greater in accuracy than the third assessment type and so forth);

- correlating base costs to said one or more migration tasks (see at least col. 4, line 67 – col. 5:1-2 **"if migration of an application which comprises 10% of the total cost base is being considered, then 100 generic units are being moved."**);

- receiving identifications of migration attributes that affect said base costs (see at least (see at least col. 2:59-61 **"three broad categories are identified hardware and software costs…"**);

- correlating cost factors to said one or more migration tasks, each of said cost factors indicating an amount by which a migration attribute affects a base cost of a migration task (see at least "**TABLE C and TABLE D**", also see at least FIGS. 2A-2C); and

- estimating said cost for each migration task, by applying said cost factors for said each migration task to said base cost of said migration task (see at least "**TABLE D**", also see at least FIGS. 2A-2C).

<u>As per claims 2 and 52</u>:

Strothmann discloses:

- wherein said one or more migration tasks comprise at least one of: system building, project management, ramp up, baseline testing, migration, system testing, delivery, acceptance testing, sign-off, exporting data, importing data, redirecting user terminals, replacing third party products and deployment (see at least col. 2, lines 44-45 "**move or migrating**", also see col. 8, line 55-59 "**Data Synchronization**").

<u>As per claims 3 and 53</u>:

Strothmann discloses:

- wherein said migration attributes comprise at least one of: hardware attributes, operating system attributes, application attributes, environment attributes, source code attributes, complexity attributes and testing attributes (see at least col. 2, lines 59-61 "**three broad categories are identified hardware and software costs...**").

As per claims 4 and 54:

Strothmann discloses:

- wherein said source code attributes comprise at least one code metric chosen from a group consisting of number of code lines, number of code modules, number of files, call types, number of calls, data volume, structural integrity, use of lexical functions and operating system dependence (see at least col. 5, line 39 "**migration of an application or applications**…").

As per claims 5 and 49:

Strothmann discloses:

- estimating a total cost for said one or more migration task, by summing said cost estimated for said each migration task (see at least col. 5, lines 41-43 "**the total projected conversion cots are two hundred fifty thousand dollars ($250,000)…**"); and
- displaying a migration assessment comprising said total cost (see at least "**TABLE D**") .

As per claims 6:

Strothmann discloses:

- wherein the migration assessment further comprises said cost estimated for said each migration task (see at least col. 5, line 45 "**Table D shows the conversion costs per generic unit**").

As per claims 7 and 50:

Strothmann discloses:

- applying tolerances to one or more of said cost estimated for said each migration task and said total cost estimated for said one or more migration tasks (see **FIGS. 2A-2C**), wherein one or more of said cost estimated for said each migration task and said total cost estimated for said one or more migration tasks comprises a cost range (see at least "**TABLE D**").

As per claims 8:

Strothmann discloses:

- wherein one or more of said base costs are received from a user (see at least col. 5, line 1 "**10% of the total cast base is being considered**…").

As per claims 9:

Strothmann discloses:

- wherein one or more of said cost factors are received from a user (see at least "**TABLE C and TABLE D**").

As per claims 10:

Strothmenn discloses:

- wherein the degree of accuracy for estimating said cost for said migration comprises a degree of accuracy for said cost estimated for said migration task and said total cost estimated for said one or more migration task (see at least "**TABLE D**" – **shows the conversion costs for each assessment type**).

<u>As per claims 11 and 48</u>:

Strothmann discloses:

- creating an assessment template based on said at least one assessment type selected, said assessment template comprising a format for said migration assessment (see at least "**TABLE P**").

<u>As per claims 12, 51 and 60</u>:

Strothmann discloses:

- correlating base time requirements to said one or more migration tasks (see at least "**TABLE O**");
- correlating time factors to said one or more migration tasks, each time factor indicating an amount by which a migration attribute changes a base time requirement for a migration task (see at least "**TABLE O**" and "**TABLE P**"); and
- estimating a time requirement for said each migration task, by applying said time factors for said migration task to said base time requirement for said migration task (see at least "**TABLE O**", also see FIGS. 2A-2C).

As per claims 13 and 56:

Strothmann discloses:

- receiving identifications for respective migration tasks for migrating said computer-based application from said source platform to said target platform (see at least col. 2, lines 44-45 "**move or migrating**");

- receiving at least one assessment type selected for estimating a time requirement for migrating said computer-based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type, and wherein said first assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said third assessment type;

- correlating base time requirements to said respective migration tasks (see at least col. 8, "**TABLE O**");

- receiving identifications of migration attributes that affect migration time (see at least col. 2, lines 59-61 "**three broad categories are identified hardware and software costs...**");

- correlating time factors to said respective migration tasks, each time factor indicating an amount by which a migration attribute changes a base time

requirement for a migration task (see at least col. 8, "**TABLE O**" and "**TABLE P**");
and

- estimating a time requirement for each migration task, by applying said time
  factors for said migration task to said base time requirement of said migration
  task (see at least col. 8, "**TABLE O**", also see FIGS. 2A-2C).

<u>As per claims 14 and 61</u>:

Strothmann discloses:

- wherein said one or more migration tasks comprise at least one of: system
  building, project management, ramp up, baseline testing, migration, system
  testing, delivery, acceptance testing, sign-off, exporting data, importing data,
  redirecting user terminals, replacing third party products, and deployment (see at
  least col. 2, lines 44-45 "**move or migrating**", also see at least col. 8, line 55-59
  "**Data Synchronization**").

<u>As per claims 15 and 62</u>:

Strothmann discloses:

- wherein said migration attributes comprise at least one of: hardware attributes,
  operating system attributes, application attributes, environment attributes, source
  code attributes, complexity attributes and testing attributes (see at least col. 2,
  lines 59-61 "**three broad categories are identified hardware and software
  costs…**").

As per claims 16 and 63:

Strothmann discloses:

- wherein said source code attributes comprise at least one code metric chosen

  from a group consisting of: number of code lines, number of code modules,

  number of files, call types, number of calls, data volume, structural integrity, use

  of lexical functions and operating system dependence (see at least col. 5, line 39

  "**migration of an application or applications...**").

As per claims 17 and 58:

Strothmann discloses:

- estimating a total time requirement for said one or more migration tasks, by

  summing said time requirement estimated for said each migration task (see at

  least col. 8, "**TABLE O**"); and
- displaying a migration assessment comprising said total time requirement (see at

  least col. 8, "**TABLE O**").

As per claims 18:

Strothmann discloses:

- wherein said migration assessment displayed further comprises said time

  requirement estimated for said each migration task (see at least col. 8, "**TABLE

  O**").

As per claims 19 and 59:

Strothmann discloses:

- applying tolerances to one or more of said time requirement estimated for said each migration task and said total time requirement estimated for said one or more migration tasks, wherein one or more of said time requirements estimated for said each migration task and said total time requirement estimated for said one or more migration tasks comprises a rime range (see at least col. 8, "**TABLE O**" and "**TABLE P**").

As per claims 20:

Strothmann discloses:

- wherein one or more of said base time requirements are received from a user (see at least col. 8, "**TABLE O**").

As per claims 21:

Strothmann discloses:

- wherein one or more of said time factors are received from a user (see at least col. 8, "**TABLE O**").

<u>As per claims 22</u>:

Strothmann discloses:

- wherein said degree of accuracy for estimating said time requirement for said migration comprises a degree of accuracy for said time requirement estimated for said each migration task and said total time requirement estimated for said one or more migration tasks (see at least col. 8, **"TABLE O" – shows the conversion period for each assessment type**).

<u>As per claims 23 and 57</u>:

Strothmann discloses:

- creating an assessment template based on said at least one assessment type selected, said assessment template comprising a format for said migration assessment displayed (see at least col. 8, **"TABLE P"**).

<u>As per claims 55 and 64:</u>

Strothmann discloses:

- wherein said first assessment type delineates a degree of accuracy for generating said time assessment that is greater than said assessment type and wherein said second assessment type delineates a degree of accuracy for generating said time assessment that is greater than said third assessment type (see at least **TABLE C – "The training costs for the initial generic units will generally be higher than training costs for later units."** In other words, the

first assessment type is being greater in accuracy than the second assessment

type and the second assessment type is being greater in accuracy than the third

assessment type and so forth).

Conclusion

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Phillip H. Nguyen whose telephone number is (571)

270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM -

3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN
8/7/2008

/Wei Zhen/
Supervisory Patent Examiner, Art Unit 2191